IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA BROWN, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-32 E
	)	
HAMOT MEDICAL CENTER,	)	
	)	(to be filed under seal)
Defendant.	)	

PLAINTIFF'S OPPOSITION APPENDIX

Respectfully submitted,

Leech Tishman Fuscaldo & Lampl

By: /s/ Patrick Sorek

Patrick Sorek
Pa ID No. 41827
Alisa N. Carr
Pa. I.D. No. 56658
525 William Penn Place, 30th Floor
Pittsburgh, Pennsylvania 15219
412-261-1600

Date: September 15, 2006

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT A

Accreditation Council for Graduate Medical Education

Office of the Secretary
535 N. Dearborn St.
Chicago, Ill. 60610

January 5, 1989

John D. Lubahn, M.D.
Chairman, Department of Orthopaedics
Hamot Medical Center
201 State Street
Erie, PA 16550

Dear Doctor Lubahn:

The Residency Review Committee for Orthopaedic Surgery, which is composed of representatives of the American Academy of Orthopaedic Surgeons, the American Board of Orthopaedic Surgery and the AMA Council on Medical Education, has reviewed the information submitted concerning the following residency:

Orthopaedic Surgery

Hamot Medical Center Program
Hamot Medical Center
Shriners Hospital For Crippled Children (Erie)
Erie, PA

Program 2604122156

Based on all of the information available to it at the time of its recent meeting, the Residency Review Committee accredited the program as follows:

Status: Continued Probationary Accreditation
Length of Training: 4 years
Maximum Number of Residents: 8
Residents per Level: 2-2-2-2

The Committee recognized that the program director is taking steps to improve the program but expressed continuing concern regarding the following:

1. In order to provide an adequate interdisciplinary educational experience, institutions sponsoring graduate medical education in orthopaedic surgery should also sponsor accredited programs in general surgery, internal medicine, and pediatrics. At the present time, Hamot Medical Center does not sponsor accredited residencies in these areas. (Special Requirements V.G.)

2. There is an insufficient number of faculty to supervise and instruct residents at all times. The Committee notes that the director has taken steps to address this issue through a sign in system for members of the teaching staff assigned to the outpatient service. The need for this approach, however, indicates that current faculty may not have the time or commitment required to support resident education. (Special Requirements III.C.2. Site Visit Report, page 12.)

3. Members of the teaching staff are not sufficiently involved in appropriate scientific societies, their own continuing education, or active research projects. Efforts are being made to improve faculty participation in research and other scholarly activities, but at the present time the program's record of publications and presentations is inadequate. (Special Requirements III.C.3. Program Information Form, pages 12g-12u.)

4. Residents do not have sufficient opportunity to develop competence in critical assessment of new therapies and medical literature or to learn the design and interpretation of research studies. Efforts are being made to improve resident experience in this area, but the residents' research record in recent years has been insufficient. It should be noted that resident experience in this area should include exposure to basic as well as clinical studies, research design, hypothesis testing and related statistical techniques, and the reporting and interpretation of research results. (Special Requirements V.F. Program Information Form, pages 12r-12u.)

5. Recent performance by program graduates on the certification examinations of the American Board of Orthopaedic Surgery has been poor. It is recognized that improvements in this area will take some time, but this is an area that must be addressed.

The program will be reviewed in approximately two years following a site visit by a specialist.

All current residents and applicants to the program must be advised in writing of the program's status, and a copy of the appropriate written notification shall be submitted to this office within fifty (50) days of the date of this letter, unless reconsideration is requested.

For information concerning reconsideration of this action and procedures by which copies of this letter are distributed, please see the enclosed document entitled "Procedures for Reconsideration and for Appeal of Adverse Actions."

Please notify this office regarding any major changes in the organization and/or leadership of the program.

Sincerely yours,

Steven P. Nestler, Ph.D.
Executive Secretary
Residency Review Committee for Orthopaedic Surgery
312-645-4692

Enclosure

cc: American Medical Association
The American Board of Orthopaedic Surgery
The American Academy of Orthopaedic Surgeons
Dana R. Lundquist
Richard W. Brzuz
John A. Ogden, M.D.

/2043a

C O P Y

J. Malone
xc: Dr. Lubahn
E. Mandel

ACGME

Accreditation Council for Graduate Medical Education

Office of the Secretary
535 N. Dearborn St.
Chicago, Ill. 60610

July 12, 1989

John D. Lubahn, M.D.
Chairman, Department of Orthopaedics
Hamot Medical Center
201 State Street
Erie, PA 16550

Dear Doctor Lubahn:

The Residency Review Committee for Orthopaedic Surgery, which is composed of representatives of the American Academy of Orthopaedic Surgeons, the American Board of Orthopaedic Surgery and the AMA Council on Medical Education, has reviewed the information submitted concerning the following residency:

Orthopaedic Surgery

Hamot Medical Center Program
Hamot Medical Center
Shriners Hospital For Crippled Children (Erie)
Erie, PA

Program 2604122156

The Residency Review Committee examined all of the information submitted in support of the request for reconsideration and sustained its prior action to accredit the program as follows:

Status: Probationary Accreditation
Length of Training: 4 years
Maximum Number of Residents: 8
Residents per Level: 2-2-2-2

In sustaining 4 of the previous 5 citations, the Committee cited the following:

1. In order to provide an adequate interdisciplinary educational experience, institutions sponsoring graduate medical education in orthopaedic surgery should also sponsor accredited programs in general surgery, internal medicine, and pediatrics. At the present time, Hamot Medical Center does not sponsor accredited residencies in these areas. (Special Requirements V.G.)

   Program's Response: The director indicated that orthopaedic residents have peer interaction with residents from two family practice residencies and have "peer relationships" with general surgeons, internists, and pediatricians who are on the staff at Hamot Medical Center.

Committee Reconsideration: The Committee reviewed the program's response, but as Hamot does not sponsor residencies in general surgery, internal medicine, or pediatrics, sustained Citation #1.

2. There is an insufficient number of faculty to supervise and instruct residents at all times. The Committee notes that the director has taken steps to address this issue through a sign in system for members of the teaching staff assigned to the outpatient service. The need for this approach, however, indicates that current faculty may not have the time or commitment required to support resident education. (Special Requirements III.C.2. Site Visit Report, page 12.)

   Program's Response: The director indicated that J. C. Lyons, M.D. has been added to the teaching staff, that a spine surgeon would be added to the staff in 1990, and that efforts were being made to add to the faculty in the area of hand and upper extremity surgery.

   Committee Reconsideration: The Committee recognizes that efforts are being made to address needs in this area. The addition of Dr. Lyons is a positive step and the plans to add two more individuals are promising. However, as these two positions have not yet been filled, the Committee sustained Citation #2.

3. Members of the teaching staff are not sufficiently involved in appropriate scientific societies, their own continuing education, or active research projects. Efforts are being made to improve faculty participation in research and other scholarly activities, but at the present time the program's record of publications and presentations is inadequate. (Special Requirements III.C.3. Program Information Form, pages 12g-12u.)

   Program's Response: The director indicates that he and two other members of the staff are involved in ongoing clinical research and that all members of the staff are being encouraged to become more active, particularly in the Orthopaedic Research Society and subspecialty societies.

   Committee Reconsideration: The Committee recognizes that steps have been taken to address needs in this area and that if efforts are sustained, this citation will be address in the near future. The Committee determined that the citation was valid at the time of the site visit, however, and sustained Citation #3.

4. Residents do not have sufficient opportunity to develop competence in critical assessment of new therapies and medical literature or to learn the design and interpretation of research studies. Efforts are being made to improve resident experience in this area, but the residents' research record in recent years has been insufficient. It should be noted that resident experience in this area should include exposure to basic as well as clinical studies, research design, hypothesis testing and interpretation of research results. (Special Requirements V.F. Program Information Form, pages 12r-12u.)

   Program's Response: The director indicated that residents work with Hamot's Director of research, a statistician, a biochemist, and a bioengineer in the research area. A number resident research projects were listed.

   Committee Reconsideration: The Committee recognized that recent changes in the program had improved resident exposure to research and encouraged the director to continue his efforts in this area so that the improvements would be sustained over time. Citation #4 was rescinded.

5. Recent performance by program graduates on the certification examinations of the American Board of Orthopaedic Surgery has been poor. It is recognized that improvements in this area will take some time, but this is an area that must be addressed. (Special Requirements VI.B.)

   Program's Response: The director reports that since he has become responsible for the program, resident performance has been good. Last year two program graduates scored in the 96th and 68th percentile on Part I of the ABOS examination.

   Committee Reconsideration: The Committee recognizes the improvement in this area during the last two years. If this record is sustained, this citation will be addressed in the near future. The Committee concluded that the citation was valid at the time of the site visit, however, and sustained Citation #5.

The Committee recognizes that the program director is making a determined effort to strengthen the educational experience of his residents. However, continued effort will be needed before these changes will have their intended impact.

The program will be reviewed in 1991 (or at an earlier date if requested by the program director) following a site visit by a specialist.

All current residents and applicants to the program must be advised in writing of the program's status, and a copy of the appropriate written notification shall be submitted to this office within fifty (50) days of the date of this letter, whether or not the action is appealed.

For information concerning appeal of this action and procedures by which copies of this letter are distributed, please see the enclosed. document entitled "Procedures for Reconsideration and for Appeal of Adverse Actions."

Please notify this office regarding any major changes in the organization and/or leadership of the program.

Sincerely yours,

Steven P. Nestler, Ph.D.
Executive Secretary
Residency Review Committee for Orthopaedic Surgery
312-645-4692

Enclosure

cc: American Medical Association
The American Board of Orthopaedic Surgery
The American Academy of Orthopaedic Surgeons
Dana R. Lundquist
Richard W. Brzuz
John A. Ogden, M.D.

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT B

ORTHOPAEDIC INTERNAL REVIEW

Interview of Dr. John Lubahn, Orthopaedic Residency Program Director
October 2, 1997
Completed by Dr. Lee Van Voris

I interviewed Dr. Lubahn for about 60 minutes regarding his residency program, as part of the internal program review. We addressed the following issues, the responses to which are outlined:

1. Goals and Objectives of the Residency Program

Dr. Lubahn stated that he has a general overall goal of the program which is "to educate and train physicians in the care and management of injuries and diseases of the musculoskeletal system and to train the resident physicians in the surgical skills necessary to provide the proper orthopaedic care" (see attachment). No educational objectives were evident for the training program. Additionally, there were no specific goals or objectives for each PGY training level. Furthermore, the goals which were outlined by Dr. Lubahn have not been updated on an annual basis, rather they are updated every three to five years. Specific educational and training objectives were lacking. Dr. Lubahn noted that the Orthopaedic RRC requirements do not specifically call for goals and objectives. Nevertheless, I made the point that specific goals and objectives for resident learning are very helpful in establishing the curriculum and measuring progress of the residents.

1*

Recommendation

- Update the overall goals of the orthopaedic residency training program and also write specific goals for each level of training. These should be updated on an annual basis in the spring of each year. Specific educational objectives should be established by the faculty, program director and residents. In this way, measurement of progress against the goals and objectives can be made for each resident.

2. Instructional Plans and Resources

Dr. Lubahn stated that his curriculum is based upon an every 18 month rotation and includes anatomy, basic science, children's orthopaedics, orthopaedic pathology, hand surgery and general orthopaedics. He noted that specific ethics lectures are included in the curriculum 2-3 times per year. In addition, during Journal Club sessions, statistical analysis and critical review of the literature are taught. Additionally, once a year a topic regarding medical legal issues also is discussed. At most Saturday clinical and M&M conferences, socioeconomic and cost containment issues are integrated into the clinical discussions. Furthermore, Dr. Lubahn states that any graduate medical education financing issues are discussed with the department and with the residents at the Saturday morning department meetings and clinical conferences. Dr. Lubahn stated that there is no specific training for the residents with regard to communication skills. Research design is taught during the basic science/research rotation. Dr. Lubahn also noted that the residents are deeply involved in departmental meetings and observe firsthand the details of orthopaedic practice.

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT C

Hamot

Hamot Medical Center
201 State Street
Erie, PA 16550
(814) 877-6000
www.hamot.org

October 15, 2003

Steven P. Nestler, PhD
Executive Director
Residency Review Committee
ACGME
515 North State Street
Chicago, IL 60610

Dear Dr. Nestler:

Several weeks ago I telephoned you regarding the possible closure of the Hamot Family Medicine Program. Indeed, after some discussion a decision was made to close the program at the end of the year. I believe the main reason is that Erie currently has one additional ACGME approved family practice program and while Hamot's program is approved, the limited number of applicants to family practice now makes it impractical to maintain two programs in the city. Our residents do have the opportunity to work with the residents from the other program but as per our discussion I feel the curriculum of our PGY1 year could be strengthened by focusing on a strong internal medicine rotation as well as the remaining requirements, such as intensive care unit, vascular surgery, neurosurgery, etc.

Hamot is presently approved for 26 ACGME positions (16 for family practice and 10 for orthopaedics) therefore I would like to apply for 5 positions in orthopaedics which would expand our program by one resident per year.

We currently have more than enough clinical material between Hamot Medical Center and the Shriners Hospital for Children. We plan to expand the teaching program by adding full time faculty who are fellowship trained in trauma, sports medicine, and total joint arthroplasty. The sports medicine trained fellow is firmly committed to begin August, 2004. We are still in the negotiating stages with the trauma fellow and the total joint fellow.

I am convinced that the program in Erie is capable of maintaining our current level of excellence with one additional resident per year.

With the plans for a site visit in January this year I am concerned that the committee would defer the decision on the additional resident thereby necessitating one additional site visit. I believe we would have a better chance of that approval of one additional resident per year if the faculty I recruit are actually in place and the program has been redesigned for the additional resident. I would appreciate, therefore, the delay of the site visit by approximately six months or at least until after August 1st once the new faculty members have started.

I look forward to hearing from you.

Best regards.

Sincerely,

John D. Lubahn, MD
Chairman, Department of Orthopaedics
Program Director, Orthopaedic Residency Program

MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT D

file

ACGME

Accreditation Council for
Graduate Medical Education

515 North State Street
Suite 2000
Chicago, Illinois 60610

Phone 312.755.5000
Fax 312.755.7498
www.acgme.org

July 28, 2005

John D. Lubahn, MD
Chairman, Department of Orthopaedics
Hamot Medical Center
201 State Street
Erie, PA 16550

Dear Dr. Lubahn:

The Residency Review Committee for Orthopaedic Surgery, operating with the accreditation authority that has been delegated to it by the Accreditation Council for Graduate Medical Education, has reviewed the information submitted regarding the following residency program:

Orthopaedic Surgery

Hamot Medical Center Program
Hamot Medical Center
Shriners Hospitals for Children (Erie)
Erie, PA

Program 2604122156

Upon review of your April 7, 2005 submission, the Committee continued to conclude that an increase in resident complement should not be approved at this time. Specifically, they identified that the lack of accredited programs in general surgery, pediatrics and internal medicine as well as program resources in spine surgery (satisfactory for 2 residents per year but not for 3) as the primary reasons for keeping the program at 2 residents per year.

Sincerely yours,

Steven P. Nestler

Steven P. Nestler, Ph.D.
Executive Director
Residency Review Committee for Orthopaedic Surgery

AUG 1 - 2005

(312)755-5025
spn@acgme.org

CC: John D. Lubahn, MD

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA BROWN, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 05-32 E
	)	
HAMOT MEDICAL CENTER,	)	
	)	
Defendant.	)	

DECLARATION OF LISA BROWN, M.D.

I, Lisa Brown, M.D. an adult individual, state as follows:

1. A memo from Pat Williams, D.O. stated that I had been struggling in regards to duties and academics, and that I had difficulty following the responsibilities of the hand service resident when my presence was not accounted for on a particular day. This is an untrue statement that had no factual basis. I was not scheduled with Dr. Williams on the day referenced in his memo. Moreover, at that time when on hand service, it was customary for all residents to use available time to read, study and dictate charts when the scheduled surgeon was absent. I used that available time to improve my knowledge base.

2. Pat Williams, D.O. stated that I neglected rounds then subsequently was untruthful about those duties. This is an untrue statement. The day Dr. Williams was referring to was a Tuesday. At that time, it was customary for residents to begin rounds after the Tuesday morning conference, which started earlier than conferences the

remainder of the week. The patient Dr. Williams references was seen and evaluated by me on the day referred to. I completed rounds on all of my patients every day I was on service and at the hospital. This fact was truthfully and accurately conveyed to Dr. Williams.

3. Pat Williams, D.O. added in the memo that he hoped the orthopaedic faculty could help me and was personally concerned about my progress. I repeatedly requested from Dr. Williams a comprehensive reading list for the hand service. He ultimately supplied a list more than one year after my hand rotations.

4. A February 20, 2004 letter drafted by Dr. Cermak reported that I had refused to evaluate a patient in the emergency room ("ER"). This is an untrue statement. I never refused to evaluate or treat a patient in the ER. The patient referred to in the letter was seen by myself within minutes of being triaged by the ER nurse and was treated expeditiously and appropriately. In fact, Dr. Cermak visited the ER as I was completing my work on the patient and commented on the nice repair I had done on the patient's tendon.

5. A conversation and e-mail between Dr. Benes and Dr. Lubahn refer to multiple occasions that I had delayed in responding to calls from the ER. As ER records reflect, not only did I return pages to the ER within minutes but, my arrival to the ER was timely. Dr. Benes and I had a discussion about the complaints from ER physicians regarding response time for most of the orthopaedic residents. Two names were specifically mentioned in those complaints, however, the complaint were not based on

correct facts. Ultimately, the other resident identified in the complaint had his contract renewed.

6. Dr. Lubahn stated that I incorrectly repaired a leg laceration on a patient in the ER. I, under the direction and guidance of the ER physician who was present in the ER that evening, repaired the laceration in a manner that was not only acceptable, but correct. The wound was copiously irrigated and closed over a drain as was instructed by the ER attending physician. The patient's wound healed without sequelae.

7. Dr. Lubahn's evaluation of a presentation given by me on February 25, 2004 concluded that I had insufficient, immediate specific knowledge about the subject matter presented. I presented two cases at that presentation. The first was skillfully presented with all specific questions answered correctly. The second case was also skillfully presented. However, the presentation was evaluated as unsatisfactory because as a Level 3 resident I was not able to recall the answer to a specific question by Dr. Lubhan. When the same question was posed to the Level 5 resident, he was also unable to give a correct answer. The Level 5 resident was not terminated from the program or reprimanded for his error.

8. Dr. Lubahn stated that I needed to increase reading to improve core knowledge. Not only was this a common statement in most of my evaluations with Dr. Lubahn, this was also a standard recommendation to all of the residents and is reflected in their evaluations. Again, when I asked for specific reading lists of topics, Dr. Lubahn referred me to Chapman's 4 volume Orthopaedic Surgery book and Green's 2 volume Operative Hand Surgery book. His other suggestion was to refer to Internet searches

for information. Specific topics suggested by Dr. Lubahn were esoteric in nature and not practical for improving core knowledge.

9. Dr. Lubahn stated that I needed to improve OITE scores. He advised most residents to improve OITE scores. Other residents scored poorly on the OITE. I specifically asked Dr. Lubahn on December 22, 2003 for directed help in improving OITE scores. He subsequently referred me to Sylvan Learning Center. Dr. Lubahn gave detailed suggestions to other residents and offered personal help to improve their OITE scores. I was not offered similar assistance.

10. I did not raise sex discrimination issues to attending physicians or administration personnel prior to the lawsuit, in part because it was very clear that I did not have any support from these individuals regarding these issues. Given the intense scrutiny I was under, reporting incidents of sexual discrimination would have worsened the problems I was experiencing. The response given by attending physicians when I requested help with academic or clinical situations was poor at best. Additionally, I felt that raising issues about gender discrimination would be more isolating and detrimental to my education, training and career.

11. After receiving the non renewal letter of March 1, 2004 for what was described as academic and clinical insufficiency, my responsibilities in the hospital and with patients did not change. I continued to act as an independent resident in good standing without additional supervision or preceptorship. I was treated as any other orthopaedic resident at Hamot.

12. I have never been sued for malpractice.

13. Morning conferences for orthopaedic residents at Hamot were daily one hour teaching/learning sessions designated for formal education and training. They were to be attended by both residents and students rotating in orthopaedics as well as attending physicians, the program faculty, whose role was to mentor and educate those residents and students.

14. I experienced extremely difficult events in my life that I would not discuss, publicly, or otherwise, were I not required to do so in this lawsuit. I began my medical education later in life and had a number of hurdles to overcome. My daughter was born with birth defects that required she receive extensive care beyond normal child care, in addition to seven or eight surgeries over the court of her childhood. The summer before I began medical school, my mother was diagnosed with ovarian cancer. During this time, while I was in medical school, I was her primary caregiver and was with her during her three years of therapy. I also endured marriages in which I suffered betrayal not only of my welfare, but my daughter's.

15. One of the members of the Grievance Committee, George Dulabon, did not vote and residents were allowed to testify.

16. Hamot failed to provide a resolution at step 2 of the grievance procedure.

9/15/06
Date

/s/ Lisa Brown
Lisa Brown, M.D.

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT F

Resident Evaluation

Chris Arnold, MD

Dr. Arnold was asked if anything could be changed during the past year. While he enjoyed his research rotation he felt that it could possibly be shortened. He spent one month with Steadman and Hawkins in Colorado to enhance the six month somewhat. He did agree that the research rotation was important for the residency but felt that time was often wasted. Chris will be a chief resident next year with three residents this year finishing. One suggestion for coverage that year would be an attending on call alternate nights.

He felt that a general weakness in our program was that attendings did not attend conferences "enough". He noted a two week interval when I was away in July to cover board exams and on vacation, that conferences frequently went without coverage.

He noted Dr. Suprock, Cortina, and Kastrup as being excellent teachers in the operating room and appreciated Dr. Kastrup's input in conferences which he has attended regularly when assigned.

I reviewed Dr. Arnold's in-training scores with him. Generally they have improved and hopefully will continue to improve this year indicating an adequate fund of knowledge.

John D. Lubahn, MD

Resident Evaluation
Jeff Keverline
August 4, 1997

Jeff and I met to discuss his progress for the academic year. His overall performance has been in general good. He was asked to describe strengths and weaknesses of the program and felt that the clinical experience was a strength. He also, I believe, felt the research rotation was a strong part of the program but would like to see some less time or some clinical integration into the research program.

He enjoyed his Shriners rotation and suggested that as part of the Shriners rotation, the second year be included and that the chief year then be limited to a four month rotation.

When asked to describe weaknesses of the program he listed poor faculty attendance at general orthopaedic conferences. He agreed that biomechanics, basic science, hand and upper extremity, children's, pathology conferences were well covered by faculty. 90-100% of the time a faculty member is in attendance for those conferences, or more often than not the conference is cancelled or changed.

Approximately 30-40% of the general orthopaedic conferences over the last year were presented by resident without faculty in attendance. I advised him that while I felt I was in agreement that this was a high figure, it was not an unacceptably high figure, and one we need to work towards improving.

_____
John D. Lubahn, MD

Exit Interview
Gerry Trinidad
June 8, 1998

I discussed Gerry's strengths and weaknesses with him and what his plans are for his future. I reviewed all of his evaluation forms with him some of which still indicate weakness in the clinical sphere. Some of these came from Mark Suprock, MD and when I asked what Dr. Suprock probably perceives as weaknesses it dealt largely (or Gerry believes) with his ability to quickly and efficiently harvest a graft for a cruciate ligament reconstruction as an example. I must say that I worked with Gerry on a recent surgical procedure allowing him to perform the majority of a basal joint ligament reconstruction arthroplasty. He was obviously well prepared for the procedure and performed it virtually in it's entirety with only one or two questions of me as I first assisted him. I did a large portion of passing the graft, however, that was largely due to my position at the table.

I believe that Gerry Trinidad's clinical knowledge is good. I asked what he hoped to gain from his fellowship and his response was to improve working clinical and technical knowledge of the shoulder, as well as anterior and posterior cruciate ligament reconstruction's, and in general to become a better technician. His next year will be spent with Joe Torg, MD in Philadelphia and the next two years working with Duane Marchyn, MD in Portsmith, OH, a community of approximately 80,000 people due south of Columbus. I believe Gerry will do well in that setting.

When asked about certain weaknesses in the program in areas where he would like to see improvement, he once again mentioned more faculty involvement in conferences. When specifically questioned on this it is Monday and Thursday conferences which between 15-30% of the time go either unattended or taught by a resident. I did advise that I had already met with Chris Arnold, MD and planned to meet with Drs. Suprock, Babins, Rogers, Kastrup, Stefanovski and Cortina to better structure this particular gap in the conference focusing on Chris Arnold's selection of attendings to staff those conferences.

Dr. Gerry Trinidad has successfully completed this program.

_____
John D. Lubahn, MD
Program Director, Orthopaedic Residency Program

Semi-Annual Evaluation
Steve Hribar, MD
August 17, 1999

Steve Hribar, Jim Sanders and I met from 9:00 am to 9:30 am. We discussed Steve's performance for the last year. His ratings by most faculty were average or above. Since six months had been at the Shriners Hospital, I asked Dr. Sanders for his input. He reminded Steve to be more compulsive and detailed in patient history and physical examinations. Both of use advised him to obtain input from faculty on patients more often than naught, rather than trying to solve problems or treat more complex patients on his own.

In turn Steve raised concerns that faculty were not attending as many of the conferences as they should. I reminded him that for combined conferences it was the resident's responsibility to contact the faculty member in advance and that I considered a faculty members absence under these circumstances the responsibility of both the faculty member and the resident. These are the situations where "absenteeism" is a problem. When a faculty member alone is assigned to present a conference, I am not aware of any scheduled conferences not being given. If they were cancelled or changed it was done in advance such that a new conference could be scheduled. I reminded Steve to read regularly for conferences and surgical procedures, reminding him in the past that has been one of the most effective means of improving the resident's learning experience.

1*

John D. Lubahn, MD
Program Director

Evaluation
Nick Kubik, MD
July 24, 2000

Dr. Kubik's performance for the previous academic year was discussed with him. I believe he has met all of his goals for the year in terms of clinical and technical expertise.

The number of clinical faculty at various conferences once again has been discussed. He and the other residents would like to see more faculty at conferences. I do believe that the overall attendance and participation by the faculty is satisfactory and above average for many programs in the country.

His evaluations were discussed with him as well as his in-training scores and felt to be satisfactory.

His performance in the laboratory was felt to be satisfactory.

I feel he has achieved a level of performance for promotion to his PGY-4 year.

_____
John D. Lubahn, MD

Brian Dickson, MD
Exit Interview
June 29, 2001

I met with Brian Dickson for his exit interview. I asked him what he would do differently if he were to start his residency over again. His response was that he might like to have more time to spend in the outpatient setting. As with most residents finishing this program he feels that a relative strength is the clinical experience of the program. He specifically appreciated Dr. Hood in the clinic a year or so ago taking the time to explain a hand exam to him and particularly to point out intrinsic tightness.

In contrast to Dr. Galey, his co-chief resident, he felt that Saturday morning conferences were a strength to the program and brought many and varied faculty together at a common setting. He felt that he would like to see some attendings read more and we discussed a number of our current part-time clinical faculty in detail in terms of their knowledge of the orthopaedic literature. For the most part there is a thorough knowledge, however some faculty more than others rely on anecdotal information than their own personal experience. I believe this changes as the ten year cycle evolves for them to take their re-certifying exam.

Brian in turn asked what I thought were the strengths and weakness of the program were and I feel that more scholarly activity would improve the program however three clinical faculty who I feel expose the residents to scholarly activity are, myself, Jim Sanders and Phyllis Kuhn. Joao Tavares exposes the residents to scholarly activity to a certain extent as well at the Shriners Hospital. Residents would do well to spend more time with Dr. Tavares who balances clinical experience with scholarly activity.

I believe that Brian has performed admirably over his four years here. He has done well on his in-training exams, and I believe he is clinically and intellectually competent to begin a practice in general orthopaedics in Jonesboro, AR. I believe that one of the unspoken strengths of Hamot Medical Center's program is the ability to train an individual as a general orthopaedist and this is ideal for Brian in a community the size of Jonesboro.

Brian Dickson, MD has successfully completed this program.

_____
John D. Lubahn, MD
Program Director

Jim Seeds, MD
Semi-Annual Resident Evaluation
7/12/01

Jim's performance evaluation was held. His evaluations for his PGY-2 year were above average.

Jim had been previously counseled on having a regular reading and study program and was asked how this was progressing. He felt that he was reading more and better prepared for this year's in-training exam.

Jim felt that felt that more attendings at morning conference would be a big help.

_____
John D. Lubahn, MD
Program Director

Jeff Nechleba, MD
Semi-Annual Evaluation
9/16/03

I discussed Dr. Nechleba's performance thus far with him which has been well above average. His clinical performance and in-training scores have shown continued improvement.

Suggestions he had for the program were to continue efforts to improve faculty attendance at conferences and in clinic. The new trauma schedule, we both believe has improved at least initially, the clinic coverage but conference attendance still needs to be improved. 1*

The meeting was adjourned.

_____
John D. Lubahn, MD

Vivek Sharma, MD
Semi-Annual Evaluation
February 13, 2004
3:30 pm

I reviewed Vivek's performance which thus far has been above average. The available GME Toolkit evaluations were all in the five plus range. I counseled Vivek that he should continue his outstanding work. I reviewed his in-training scores with him which was in the 73rd percentile range.

Dr. Sharma had constructive criticism of the 6:45 am x-ray conference. He felt that it needed better attendance and teaching. I will provide that input to the chief resident and hopefully an improvement in the teaching quality of that particular conference can be possible.

I reviewed with him plans for Jamey DeLullo, MD becoming a full-time faculty member next year. His assistance in providing depth to the current conference schedule as well as formal teaching through all levels of the residency program will be appreciated.

We discussed written notes for his dictations in the clinic. While dictaphones and typed notes would be ideal, I believe that cost remains a concern. I will pursue the possibility of an electronic record, possibly funded through an outside source for the coming year. The meeting was adjourned.

John D. Lubahn, M.D.
Program Director

Vivek Sharma, MD

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT G

John D. Lubahn, M.D.

Curriculum Vitae

Office
Hand, Microsurgery and Reconstructive Surgery
300 State Street, Suite 205
Erie, Pa 16501

Phone: 814-456-6022
FAX: 814-456-7040
E-mail: hmro@erie.net

Home
5338 Wolf Road
Erie, PA 16505

Wife
Terri L. Wolfe

Social Security Number
274-44-1294

Date of Birth
July 14, 1949
Ashtabula, Ohio

Certification
Certified by the American Board of Orthopaedic Surgery - September 10, 1982
Recertified - Hand Qualifications, Hand Surgery
American Board of Orthopaedic Surgery, July 1992 and August 1998

Licensure

Pennsylvania	MD 025337-E
Ohio	35-05-0066
New York	129800-1

Education
Edgewood Senior High School (1963-67)
- National Honor Society

Undergraduate
Adelbert College - Case Western Reserve University (1967-1971)
Degree: Bachelor Arts, Summa Cum Laude
- Folberth German Award
- Litwack Award for Scholarship and Athletics
- Warrion Trophy for Scholarship, Leadership and Service
- Phi Beta Kappa
- Omicron Delta Kappa
- Delta Phi Alpha (German Honorary)

Medical School
Case Western Reserve University, 1971-1975
- Alpha Omega Alpha Honorary Fraternity

General Surgical Training
1975-76: Intern, General Surgery, University of Rochester, Strong Memorial Hospital, 601 Elm Avenue, Rochester, NY 14647
1976-77: Associate Resident, General Surgery, University of Rochester, Strong Memorial Hospital

Orthopaedic Surgical Training
1977-78: Associate Resident, University of Rochester, Strong Memorial Hospital, Department of Orthopaedics
1978-79: Senior Resident, University of Rochester, Strong Memorial Hospital, Department of Orthopaedics
1979-80: Chief Resident, University of Rochester, Strong Memorial Hospital, Department of Orthopaedics

1977-80: Member of Replantation Services, Rochester, Strong Memorial Hospital
1980-81: Christine Kleinert Fellow in Surgery of the Hand, University of Louisville Medical School, 323 E. Chestnut Street, Louisville, KY 40202
June, 1981 Pediatric Hand Surgery, Professor Dieter Buck-Gramcko, Hamburg, Germany

Paul Harris Fellow Award (July 8, 1998)
Presented by the Rotary Foundation of Rotary International "In appreciation of tangible and significant assistance given for the furtherance of better understanding and friendly relations among peoples of the world."

Past Appointments
July 1980-October 1980: Instructor in Orthopaedics, Rochester Medical Center
1988 American Society for Surgery of the Hand. Chairman, Regional Review Course Committee.
1999 - 2000 American Orthopaedic Society, Joint Vice President
1999 - 2000 Program Director, Eastern Orthopaedic Association
2001 President, American Orthopaedic Society

Current Appointments
- Chairman, Department of Orthopaedics, Hamot Medical Center; Erie, Pennsylvania (Elected, 1986)
- Program Director, Hamot Medical Center, Erie, Pennsylvania (1988)
- Instructor in Orthopaedics, Shriners Hospital for Crippled Children; Erie, Pennsylvania
- Instructor in Orthopaedics, St. Vincent Health Center; Erie, Pennsylvania

National Appointments
2002 President of the American Foundation for Surgery of the Hand
1988 - Present Examiner. American Board of Orthopaedic Surgery Board of Examiners
1987 - Present Site Visitor, Accreditation Council for Graduate Medical Education, Residency Review Committee – Orthopaedics

Society Memberships
- American Medical Association
- American Orthopaedic Association
- American Academy of Orthopaedic Surgeons
- American Society for Reconstructive Medicine
- Academic Orthopaedic Society
- Eastern Orthopaedic Association
- American Society for Surgery of the Hand
- Orthopaedic Research Foundation
- Pennsylvania Medical Society

Committees
- Association of Orthopaedic Chairmen, Graduate Education Committee
- American Academy of Orthopaedic Surgeons, Committee on Evaluation (Orthopaedic In Training Exams, 1991,1992, 1993, 1994, 1995
- American Society for Reconstructive Microsurgery Guidelines & Outcome Studies, Chairman - 1993
- American Society for Surgery of the Hand - Program Committee, 1993, 1994, 1995
- American Society for Surgery of the Hand - Self Assessment Exam Committee, 1995, 1996
- American Society for Surgery of the Hand - Self Assessment Exam Committee - Chairman, 1997
- American Society for Surgery of the Hand, Hand Professionals Task Force - 1999
- Eastern Orthopaedic Association, Inc - Program Committee 1998-1999
- Eastern Orthopaedic Association, Inc. - 2000 Program Chair

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT H

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA BROWN, M.D., :
Plaintiff :
:
v. : Civil Action No. 05-32E
:
HAMOT MEDICAL CENTER, :
Defendant :

Deposition of JOHN LUBAHN, M.D., taken before and by Carol A. Holdnack, RPR, Notary Public in and for the Commonwealth of Pennsylvania, on Thursday March 16, 2006, commencing at 9:41 a.m., at the offices of Scarpitti & Mead, Renaissance Center, 1001 State Street, Suite 800, Erie, PA 16501.

For the Plaintiff:
Patrick Sorek, Esq.
Leech Tishman Fuscaldo & Lampl, LLC
525 William Penn Place, 30th Floor
Pittsburgh, PA 15219

For the Defendant:
Kerry M. Richard, Esq.
Tobin O'Connor Ewing & Richard
5335 Wisconsin Avenue NW, Suite 700
Washington, DC 20015

Reported by Carol A. Holdnack, RPR
Ferguson & Holdnack Reporting, Inc.

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JOHN LUBAHN, M.D., first having been duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. SOREK:

Q. State your name for the record, please.
A. John Lubahn.
Q. And, Dr. Lubahn, have you had your deposition taken before?
A. Yes.
Q. And what kind of case was it?
A. Primarily Workers' Comp. cases, medical/legal cases.
Q. So about how many times have you had your deposition taken?
A. In 25 years?
Q. Yes.
A. 50.
Q. Okay.
A. That's a guess, by the way.
Q. All right. So you're familiar with the deposition process in terms of how it goes. I represent the Plaintiff, Dr. Brown. You have counsel here. It's a question-and-answer process. The information that you give

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is similar to what you would be providing if you were testifying at court. And that your answers have to be out loud. You've heard all of that many times before, I take it.
A. Yes.
Q. Who did you talk to besides your lawyer to prepare for the deposition today?
A. Dana.
Q. Ms. Ashley.
A. Yes.
Q. And that's it.
A. Yes.
Q. What documents did you review to prepare for your deposition today?
A. Folders that they brought with them.
Q. "They" meaning who?
A. Dana and Attorney Richard.
Q. What were in the folders?
A. For the most part, documents related to Dr. Brown's performance evaluations, in-training scores, her file.
Q. Okay.
A. That's all I can remember. It's kind of like this stack of papers we have here.
Q. And you're indicating just maybe 3 or 4 inches of

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Q. Do you remember when?
A. No.
Q. Did you ever discuss Dr. Brown's response with her?
A. Not word by word, I didn't dissect it. I think I probably, on some occasion, mentioned to her that she was being overly defensive and needed just to focus on her problem, her reading skills. And I never made light of the fact that Dr. Williams' concerns weren't valid. But my recollection of my discussions with her and Dr. Williams were, let's get over it and move on.
Q. Okay. Would there be a different level of a severity of problem in your mind if a resident did not round on patients as opposed to rounding on patients and writing a note?
A. I think the issue here is, one, that you described. But, two, the issue that Dr. Williams mentions, that she initially said she saw the patient and then didn't see the patient, or whether she really went by at 6:00 a.m. or not. And my recollection that was what the problem was.
Q. It seems like Dr. Brown is telling you in this note that she did see the patients but she didn't write the note. And what was your view of how to resolve that?
A. My recollection is I told her, Lisa, if you didn't write the note, there's no way for us to know really whether

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or not you saw the patient. And so I just stressed to her the importance of every day writing a note.
Q. The second paragraph, Dr. Brown talks about asking Dr. Williams for reading materials, being told by Dr. Williams that he would give her one, and then never getting that. Do you see that?
A. I do.
Q. Is that a legitimate concern of Dr. Brown's?
A. Residents frequently ask for reading materials but aren't ever actually handed a list. And it concerned me here that she expected Dr. Williams to go to the library, pull out articles, make copies and give them to her, which is way above and beyond the call of duty, in my opinion. And that's what I think she was asking for.
In retrospect, as I read it initially, I thought she was just asking for some references, but I really think she wanted more. And this is all at a time when she should be able to figure that all out herself.
Q. You do see where she herself says that she wanted a list, a list, a reading list. Dr. Williams said he would get her a list. And she reports that she didn't get any.
A. Yeah, but one of the core competencies for a resident is for them to be able to look up in the library what they need to know about a problem. And this is just telling me that she can't do that or didn't want to do that

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or wants the attending to do it for her. And it disturbs me more to look back on it and read it now than it really did at the time.
Q. And so in your experience -- let me think about that. Have you ever known faculty members to provide reading lists to residents?
A. That's a really, really unusual thing, for a faculty member to do it on an individual basis for one resident. We have a reading list for every hand conference. And we frequently review the topics ahead of time. We have journal clubs. It's an ongoing process.
Q. Take a look at your 2286.
MS. RICHARD: That's going to be in the stack or is it in the --
MR. SOREK: It's in the stack, yeah.
MS. RICHARD: Turn to 228 -- yeah. And I'll keep the number of that one handy so you can get back to it.
Q. That's a multi-page document entitled Hamot Hand Service Selected Reading List, right?
A. Right.
Q. What is?
A. Recommended articles to read while you're on the three-month rotation.
Q. Okay. Who put the list together?

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A. I don't remember.
Q. Who is the list given to?
A. I'll back up a little bit. It's based on a publication by a doctor named Peter Stern, as I recall. But it's -- I don't know that it's given to anybody. All the residents, when they're on the service, are advised of that list. We may hand it out. I don't know. I don't hand it out.
Q. Well, they're advised about the list. What are they advised about; that it exists, about where to find it, do they get a copy?
A. Well, it's kind of like in school when the teacher writes something on the board and says, you may see this material again, this is important stuff. That's the message that the attending conveys to the resident; read it.
Q. Yeah, but.
A. You've got three months, read it.
Q. The questions I'm asking are about this document, this document. Is it -- where is this document maintained?
A. I couldn't tell you.
Q. Is it given to residents?
A. Yes.
Q. It's handed to them; is that fair to say?
A. I don't know that. It's more resident to resident than it is me to resident. Williams might give it to them;

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Cermak. I don't personally. This is something that's evolved within our group of four hand surgeons. When the resident is on our service, they come to us, they say, what should we be reading. This is what we give them.
Q. Okay. And when you say "this," you're talking about this document starting at 2286. And it -- I would like to know whether you say there's something in the library, go find it, for example, there's something that -- the list is in that drawer, go look at it, or, here, I'm going to hand you a copy of the list.
A. I don't know the answer to that.
Q. All right. This is for -- you're on the hand service, aren't you?
A. Yes.
Q. Do you know whether any of the rotations have a similar list?
A. The reading lists?
Q. Yes.
A. I believe they do.
Q. Do you know, as you sit here today?
A. Basic science, I know it does. I can't quote the other ones, no.
Q. So you don't know whether the other rotations have a list or whether they provide them to residents?
A. I know they all get reading materials. Whether

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there's a list like this, I don't know.
Q. So when you say "They all get reading materials," what are you talking about?
A. Well, if Dr. DeLullo is doing intercruciate reconstruction with a resident, and they talk about it the night before, he's probably going to suggest that article to read.
Q. Okay.
A. He doesn't have to, but he probably is going to.
Q. I'm going to confine my questions mostly to what you know to have happened. And so do you know whether Dr. DeLullo does that?
A. I know that he does that.
Q. And do you know what he gives residents?
A. No.
Q. Does the subject of reading lists -- has the subject of reading lists for orthopaedic residents come up as a subject of discussion with orthopaedic faculty say in the past three years?
A. I don't remember.
Q. Could you take a look at 3345.
A. Okay.
Q. That's the letter you wrote to Dr. Brown on April 14th, 2003, correct?
A. Correct.

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Q. And it's a follow-up to a phone conversation. The first sentence says, where you discuss with Dr. Brown, the schedule, her schedule for her probation. Is that a fair summary of the first paragraph?
A. Yes.
Q. Do you remember the conversation?
A. Yeah, somewhat. I think when I provided her with that schedule, she said, gee, you really didn't ask me about it. And I said, well, I really didn't think I had to, but I'm flexible if you have some concerns. I can take the opportunity to talk to Dr. Babins and Cermak to get them to help you out. But, you know, I was -- this letter, I think, is just a response to that.
Q. So this letter was an adjustment to the schedule from your probation letter, correct?
A. Yes.
Q. After you sent this letter, did you ever do any follow-up about whether Dr. Brown had reading time as a result of the schedule that you had worked on?
A. I don't recall.
Q. In the second paragraph you say, "Please understand that this three-month period is in no way intended to, quote, smother you, rather to give you the opportunity to prove you are serious about orthopaedics, committed to self-study, and enhancing your clinical care

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skills." Correct?
A. Correct.
Q. In your view, how was Dr. Brown supposed to prove those three principles or her adherence to them; her seriousness to orthopaedics, her commitment to self-study, and her enhancing of clinical care skills?
MS. RICHARD: I'm just going to object to the form of the question, but you can answer.
A. Well, I think committed to self-study and clinical care skills answer the first part, which is orthopaedics, because they are part of orthopaedics. And commitment to self-study would be to prove to Dr. Babins and Dr. Cermak that, in fact, she was capable of having a discussion about a patient, agreeing on a treatment plan and then following through on it, and then being able to trust her.
And then the self-study would be her ability to answer questions about various diagnoses in a clinical or operating room setting with those two attendings to their satisfaction.
Q. Did you say those things to Dr. Brown or is that something that she was supposed to know?
A. I think any physician is supposed to know that.
Q. Take a look at Document 3343.
MR. SOREK: This document, you'll remember, Kerry, we will redact the name in this document.

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emergency room?
A. I think in Dr. Brown's case it goes back to the initial concerns that were all mentioned earlier. It's a culmination of all of her performance.
Q. Well, I would like to ask you what you had in mind when you wrote the letter, if you can recall.
MS. RICHARD: I think he just answered that.
A. Well, it goes back to the original concern by Dr. Williams. It continues on with my having told her to leave a wound open, and she closed it, and in my opinion wasn't as honest with me as she could have been about why she didn't do what I asked. And that, to me, I can't reconcile that. And she never really recovered from that, in my opinion.
Q. She never recovered from what? I'm sorry. Recovered from what?
A. She never proved herself to me that she was trustworthy. The one time that I had told her to do something, and she did exactly the opposite. The patient could have died.
Q. What are you referring to; the laceration?
A. Yeah. That I told her to wash out and leave open, and she did exactly the opposite of what I told her to do. People die from that.
Q. Do people die from physician errors in writing

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notes on charts?
A. Yes.
Q. You've had that problem with residents, haven't you?
A. No, never had that.
Q. How about Carl Seon?
A. Patient died?
Q. No, no, no, no, no. No. Problems with Dr. Seon's handwriting that were brought up in evaluations.
A. Yeah. I thought you meant a patient died from the handwriting.
Q. The patient you're talking about, as far as Dr. Brown is concerned, that patient didn't die, correct?
A. No.
Q. All right. So I still have to nail this down. When you -- I have to know, if you can tell me --
A. If I can continue, because I wasn't finished.
Q. Okay, go ahead. I'm sorry, then.
A. There was the episode that I talked about with the wound that she closed that I told her to leave open.
Q. Yeah.
A. Which is a big one. Out of 100 points, that's 60 percent. There was a consult that she was asked to do in the OB-GYN service that she didn't do, and had a pretty weak excuse.

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Q. What do you remember about that?
A. She was called to see a patient who was in labor, who had what's called a Klippel-Feil syndrome. And the obstetricians and gynecologist really wanted to know what it was. And were there any concerns that they should have. And her response was, I'm not going to do it, liability is too great.
She called one of the attendings, who was on call that day. He said, no, you don't have to do it, you should have called me. She didn't call me. I ended up doing the consult. I can't -- I can't understand her thought processes.
Q. But you mention she called an attending, and the attending said not to do it. Does that mean there was some disagreement, or what?
A. No. The attending was a total hip surgeon, and he wasn't going to do it. Which means to a resident they've got to get the right attending, which would have been me in that case. But she walked away from it, and I got called.
And that's irresponsible behavior on the part of a physician. You learn that in medical school. You can't just walk away from something. She deserted the patient. And when I talked to her about it again, it was kind of a defensive-type thing. I think those issues in and of themselves are sufficient for me not to move her on to the

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next year.
Q. And those were the issues you had in mind when you wrote this letter.
A. Yeah, those are the types of clinical concerns that -- as the Dr. Cermak letter that comes in again later, where she doesn't go to the emergency room when she is called.
One of the private offices sent me a letter one time that they would call her about consults, and she didn't do them. And I asked her about that one time, and she said she was having a bad day. That's all she said. I can't live with that. I can't take somebody like that and move them on to the next year.
Q. Still, it's important for me to know, and I have to have an answer. And if I'm -- if you have given it already, you can just tell me that. When you wrote the letter at the time, when you refer to clinical performance, the things that you just mentioned, is that what you had in mind --
A. Yes.
Q. -- when you wrote the letter?
A. Yes.
Q. And then you say "Concerns regarding your current knowledge base in orthopaedics." What were you referring to when you said that?

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taken any steps -- or what's been your response to residents' concerns about faculty attendance at morning conferences?

A. Well, you're going back to a time when, during some of those interviews, Dr. Rogers got sick, Dr. Tavares retired, Dr. Frankovitch retired. I hired Dr. DeLullo. Dr. Kuehn has come and gone. So there's been a dynamic flow of faculty, if you will. We currently have three brand new full-time people at the Shriners Hospital. So I think right now those faculty issues have been resolved.

Nechleba, who is now a full-time -- is a geographic full-time faculty member, is somebody I've known after to come to conferences and do conferences. So he leaves as a resident critiquing the program, and now he's part of the program. He solved his own problem, in some respects.

Q. You had a plan at one point to add a resident for each of the PGY years to the program, correct?

A. Yes.

Q. And the plan was turned down by the ACGME, correct?

A. Correct.

Q. Do you know why?

A. The issues they cited were insufficient full-time faculty to have another resident per year, and the absence

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of a spine surgeon, an adult spine surgeon.

Q. What was it that led you to want to add an orthopaedic resident?

A. I think we have more than enough clinical material. I would add, I subsequently applied for a hand fellowship, and that was accepted. So, on the one hand, they turned us down, and on the other hand they added a person.

But there are plenty of times that the attending faculty are in a clinic by themselves or they're in the operating room by themselves. And those are surgical procedures and clinical situations where a resident could learn.

Q. You had a temporary -- a temporary place or a temporary spot in 1995 into the residency program. Do you recall that?

A. Yes.

Q. Do you remember who the resident was?

A. Thomas.

Q. Eric Thomas?

A. Yes.

Q. And what -- how did that come about?

A. At the time I was, I think, vice president of the Academic Orthopaedic Society. Jim Herndon was president of the American Board of Orthopaedic Surgery. And Reginald

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Cooper was the president of the -- the chairman of the Residency Review Committee. And this resident was terminated from the program in Philadelphia. And he felt that he had been inappropriately terminated, or contract not renewed, whatever.

Q. He, the resident.

A. He, the resident. He wrote to these individuals and, I guess, made a compelling argument that he should get another chance. And they both called me. I respect both of them, and so I agreed.

Q. Do you remember how his -- he came on PGY-3 year?

A. I don't remember.

Q. You don't, okay.

A. Two or three.

Q. How did his participation in the program turn out?

A. I would describe him as high maintenance. He finished the program. He passed his boards, Parts One and Two. He subsequently joined the military. He's been on the faculty at Tulane. And he's a done very well for himself.

Q. When you use the phrase "high maintenance," what are you referring to?

A. He's a professional football player. He was a big guy. Had a big ego. Didn't think he could do anything wrong. It was hard to get him to toe the line. But I must admit, when you set him down and said, here's what I expect

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of you, he followed up. He did what he was supposed to.

Q. What role does the performance on the OITE exam play in the advancement or promotion of residents?

A. It's a factor. It's used as a barometer to indicate the resident's core knowledge. When research studies have been done, it's 80 percent plus accurate in determining what the faculty think the resident's knowledge is and what the resident's performance on the exam is. In other words, if faculty are interviewing and they're asked to describe a resident's performance, it tends to parallel the OITE scores.

It's a reasonably good predictor of their performance on Part 1 of the board exams. And by that I mean, if somebody scores routinely in the 80th percentile on their OITE, they've got an 80 to 90 plus percent chance of passing the exam on the first try. If they're in the lower 20th percentile, then they have a lower percentage of passing.

Q. How do you yourself use the OITE in your evaluations of residents?

A. When I talk to them and when I look at their scores, which are broken down by hand and upper extremity, spine, pediatric, orthopaedics, basic science, they get the number of questions they missed in each of those areas plus their score in each of those areas. And it's a nice tool to

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A. When I was a resident.
Q. So you haven't taken it yourself since you have become program director; is that correct?
A. I don't really think I've taken the test as a -- as a knowledge measurement since when I was a resident in the '70s.
Q. And how about at all?
A. I take the Board exams, and I've taken Board exams and recertified. And I've taken every exam they've let me take.
Q. We're talking about the OITE now. Have you ever taken it at all since you've become program director at Hamot?
A. I personally never sat down and took it with the residents, no.
Q. Or at any other time.
A. Not that I remember.
Q. Take a look at the Volume 2, small binder, Document No. 7340.
MS. RICHARD: And that's --
MR. SOREK: Now, these should all be in numerical sequence.
A. (Witness complies.) Okay.
Q. Okay. I want to go back and ask you a few other questions about the program, the Residency Program. Do you

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know how many residents have gone through the program at Hamot, in total, since its inception?
A. No.
Q. Do you know when the program was founded?
A. Not exactly.
Q. Does 1948 ring a bell?
A. It does, but that wouldn't, I don't think, be under the ACGME guidelines. It started out as a preceptorship, and then it became a residency. And I don't know exactly when it became a residency.
Q. Do you know about how many residents have gone through Hamot's Orthopaedic Residency Program?
A. No.
MS. RICHARD: Just to be clear, since when?
Q. For as long as you can remember.
A. Well, it's been two a year since I've been here, and I can really only comment accurately from 1980 or so on. I don't really know much about the history of it. I know Drs. Davis and Fortune started it, or I'm told they did. But I've not gone back and read about it, nor had any detailed discussions with anybody about the history.
Q. So your knowledge extends back to about 1980; is that what you're saying?
A. Thereabouts.
Q. And two a year have gone through the program since

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then?
A. There may have been a year or two where there were three, and maybe a year where there was one.
Q. In your experience, are you able to say how many residents were terminated from the program?
A. Well, again, the only two I can remember are the ones that came up in the last discussion, one that Dr. Rogers was the program director, and then I believe he was terminated. And then in this instance, a contract wasn't renewed.
Q. All right. But right now we'll stick with terminations.
A. Only one person that I'm -- since I've been here, in the middle of the program was told they had to leave.
Q. Do you know the name of that person?
A. I don't remember. If you said it, I might be able to identify him. I know it was a male. I know it was in the first or second year.
Q. Do you remember when that was?
A. Early '80s.
Q. So that's termination. Contract is not renewed. To me, that's a different category, and, of course, you're the one who will provide the information. But in your experience, how many residents have not had their contracts renewed?

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A. In orthopaedics, this is the first time.
Q. It's your expectation as program director that once residents are admitted to the program, that they will complete the program; is that correct?
MS. RICHARD: I'm just going to object to the form of the question, but you can answer.
A. Can you say it again.
Q. Sure. It's your expectation as program director that when an applicant is admitted to the residency program, that they will complete the program.
A. Yes.
Q. That's Hamot's expectation as well.
MS. RICHARD: I'm going to object. If he knows what Hamot's expectation is, he can say so, but.
A. Well, if they didn't have -- that's why we're in business, yes, I think.
Q. ACGME; is that ACGME's expectation as well?
MS. RICHARD: Again, I'm going to object on the basis of he has no way of knowing what ACGME's expectation is.
A. I don't think they have an expectation. They're a review body. I don't think that's an appropriate way to view the ACGME or the overseer. And I can't answer that. I have no idea what they think. I look to them for guidance and rules and regulations.

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Q. Well, they do tell you how many years an acceptable program is supposed to be, don't they?
A. Yes.
Q. So isn't that some indication to you what they -- how long the program -- how long they expect a program to last?
A. I think the word "expectations" in terms of the ACGME has to do more with quality and education and what they're supposed to learn in the program, and not whether they finish. I think if somebody learns everything they're supposed to, then I think the ACGME probably would look at that individual and say you should finish.
Q. All right.
A. But if they don't have the knowledge base, I don't think that the ACGME would expect them to finish.
Q. But the standard -- the standard length of time the ACGME sets for completion of an orthopaedic surgery residency is five years, correct?
A. Yes.
Q. And there's study and establishment of standards that a resident is supposed to meet in each of those years, from the ACGME, correct?
A. Yes.
Q. In your experience, how many women have gone through the -- on to Hamot's Orthopaedic Residency Program?

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A. Dr. Galey, one.
Q. Okay. And Dr. Brown is the other one who was in the program but didn't complete it, correct?
A. Right.
Q. Any residents who may not have been terminated or may not have had their contracts renewed but were advised to leave, and did?
A. In fact, there was a Dr. Wong, who voluntarily left. But I -- not that I recall, your specific question, no.
Q. Now, we'll get back to 7340. So this is a letter to you in June of 2002 from a Dr. Augustus White.
A. Yes.
Q. Of the American Association of Orthopaedic Surgeons, correct?
A. I just said it's the American -- it does say American Association. I would say that he represents the Academy's Committee of Diversity.
Q. All right.
A. The Association is some sort of another corporate name that they have to have. The letterhead and the stamp is from the Academy, the American Academy of Orthopaedic Surgeons.
Q. Can you briefly describe the difference in terms of your familiarity.

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A. I answered it as best I could. The Academy some years ago set up a separate corporation C, something to make them tax exempt. I think one is tax exempt, one isn't.
Q. You're more familiar dealing with the Academy; is that fair to say?
A. Right. And that's what -- the Diversity Committee is part of the Academy.
Q. So in this letter, at the end of the first paragraph Dr. White says he's asking for your help. Do you see that?
A. Yes.
Q. And then he states in the second paragraph, only 2 -- second sentence, "Only 2.6 percent of all orthopaedic surgeons are women even though women make up more than half of all medical school graduates." Do you see that?
A. Yes.
Q. Do you have any reason to doubt the accuracy of that statistic?
A. No.
Q. Why is that?
MS. RICHARD: If you know.
A. I don't know is the answer.
Q. Have you ever thought about it?
A. Yes.
Q. And what was your thinking?

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A. Well, as the program chair, we've tried to get more women in the program. And we've, I would say, preferentially interviewed women for the program, as well as Blacks, Hispanics, Native Americans and Latinos. We've tried to follow up on Dr. White's recommendations. But we go through a match. And as such, we get what we match, so to speak. But we certainly do try to follow up on what Dr. White recommends in this letter.
Q. You talked about preferential interviewing. What is that?
A. Well, if we had -- we get roughly 200 applicants for the program. And we look at geography and we look at their Board scores and their letters of recommendation. And if we have two applicants who were comparable who we thought we would like to interview, and one was a woman and one was a man, we would grant the interview to the woman.
Q. And can you say how many times you've done that?
A. Every time.
Q. Starting when?
A. Boy, as long as I can remember, we've -- as a committee, we've preferentially selected minority people to interview. We haven't always matched them. But we have tried to interview more.
Q. Is the interviewing that you described, is that policy or is that just something that's -- that I'll

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describe as ad hoc, that you just tell people about? Is it written down, is it official, or is it something else?
A. I don't believe it's written down. But I'm the chairman of the committee and I select other faculty. And we and other members -- currently, it's Dr. Delullo who reviews the applicants. We have the resident who is in the lab look at the applicants. And it's a collective decision. It's not a unilateral decision as to who we interview.
Q. Are you able to say how many times you've done these -- made a decision to preferentially interview minority or women?
MS. RICHARD: I think he said every time.
Q. Okay. Then I'll ask the number.
A. I can't give you a number.
Q. Have you ever heard the phrase "Affirmative Action"?
A. Yes.
Q. Do you know what it is?
A. I think I just described it. I think that preferentially interviewing minorities is Affirmative Action.
Q. All right. So apart from preferential interviewing, can you say what else you did to accomplish the goals that Dr. White describes.
A. I don't think there's anything else I can do.

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Q. If you look at the next page, 7341, it has a form to fill out with categories for, I think, background and the sex of the resident. And it looks like you filled in that chart. Do you see that?
A. Well, I'm going to say that I don't know that I filled it in. And it's not particularly familiar with me, but somebody filled it in. And it was sent to our program, and it looks like a questionnaire from the Diversity Committee.
Q. The top line, the line that's the total number of current residents.
A. Yes.
Q. The second block. I believe underneath the W there's an M and a W two blocks next to each other.
A. Yes.
Q. It's filled in with a one. That one represents Dr. Brown, doesn't it?
A. I'm going to bet that in 2002 it meant Dr. Galey, but I don't know.
Q. All right.
A. If these two go together, and I don't know that.
Q. If what two? You mean these two pages?
A. Yeah. If this survey went along with the letter that you just referred to from Dr. White, dated June 21st, 2002.

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Q. Well, if you look at the --
A. Well, PGY-2, then it would be Dr. Brown. It's a woman.
Q. And also if you look at the last paragraph of the cover letter.
A. All right.
Q. Dr. White says, "Please cooperate with the Diversity Committee by completing the attached form."
A. Fair enough.
Q. All right. And there's two questions on the next page, 7341, "To what degree do you feel your current residency program supports these goals. Please circle the appropriate response below." And 5 is circled. Do you see that?
A. Yes.
Q. 5 represents completely supports, correct?
A. Yes.
Q. And the question is, how does the current -- how did Hamot's program support those goals other than the preferential interviewing that you just described?
A. I don't think to get more minority people into the program, the only thing we can do is interview more. We have to interview them so they can match for our program. We can't hire them outside the match.
Q. Actually, you can do that, because you've done

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that -- you've added residents in the middle of residencies and on others' recommendations during the course of your experience, haven't you?
A. But to get people into the program that are brought in at the PGY-1 year, that's done through the match. We're given so much money for each resident, and we can't add people on at different years. The only people we can get are people who have left other programs.
Q. Okay. And that's happened in the past, though, correct?
A. Yes.
Q. None of those have been women, correct?
A. No.
Q. The next question is, "To what degree are you interested in welcoming qualified women and minorities into your Orthopaedic Residency Program." And No. 5 is extremely interested and that's circled. Do you see that?
A. Yes.
Q. And so if I asked you the steps you've taken to welcome qualified women, ethnic minorities, would your answer be the same as you just gave?
A. Last year, out of about 30 interviews, we had seven women.
Q. Did any match?
A. No. Our first choice was a woman.

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one or two years --
THE WITNESS: That's not always sexual.
MS. RICHARD: Okay. That's what I wanted to be clear about. But now go forward. Correct that answer and go forward to answer his question.
A. The one physician made inappropriate sexual advances to a number of nurses, and didn't comply with the recommendation for treatment and was terminated. And that's the only one I know that was terminated for that reason.
Q. Now, I would like to know whether you are aware of any other similar incidents of inappropriate sexual conduct that did not result in termination.
A. I've not been made aware of any.
Q. And you don't know any personally.
A. No.
Q. I would like to turn to -- in Volume 2, a small binder, turn to 6136.
MS. RICHARD: Sorry. I couldn't find the number on that page, 6136. There it is.
A. Okay.
Q. I want to ask you some questions about your assistance to William Bambrick.
MS. RICHARD: And for the record, I'm going to assert confidentiality over this portion of the testimony. You can go ahead and answer.

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Q. How did you come to be involved in assisting Dr. Bambrick?
A. Well, I guess I would say it's a relatively long story. And I'll answer that. And if you want me to stop or speed up, tell me. But I initially met him in the early '80s. When I came here, he was a senior resident. Finished the program. Went to Florida. Had kind of a -- he passed his Boards. Did well academically, but had kind of a stormy course in Florida.
Q. Stop there. Stormy course consisting of what?
A. A divorce, drugs, malpractice cases. And he left Florida to move to North Dakota. He went to a rehab program. And from what I know of him, he's clean since he left Florida, which would have been in the early '90s. And practiced there for close to 15 years. And then --
Q. Practiced where, North Dakota?
A. North Dakota. Although, I'm estimating the years, because I have no idea when he actually left Florida. And from what I could learn, had a pretty clean slate there, at least in terms of not going back to drugs or alcohol. And by drugs, I think it was all marijuana. I don't know that he was involved in anything worse than that.
Another group in town and he didn't get along. They had his practice audited. The hospital asked him to leave based on the audit, which I was privileged to read.

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And I've done this for a number of physicians. I'm doing one for a physician in the Pittsburgh area right now who wants to come here for some remedial work. And if it works out, it works out. And I at least offered that to Dr. Bambrick.
Now, I would say that, unfortunately, he could never get the malpractice coverage to come to Erie and really work in a tutorial like it was meant. He's fairly ill with diabetes, and never was really ever able to go through the tutorial as it was intended. And my understanding is he's now on disability.
Q. You actually knew him personally in the early '80s; is that correct?
A. I knew him as well as an attending knows a resident. I wouldn't describe it as a personal relationship.
Q. Sure. But he was a resident while you were a faculty -- he was a resident at Hamot while you were on the faculty, correct?
A. Right. Basically a teacher/student relationship.
Q. Did you have anything to do with his admission to the residency program at Hamot?
A. No.
Q. Now, Dr. Bambrick came to Hamot from a Mexican medical school; is that correct?

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MS. RICHARD: If you know.
A. I know that he attended medical school, but I don't know that he came to Hamot from that school. He may have had some training in between.
Q. Take a look at 6335.
MS. RICHARD: It's got to be in between there. There it is.
A. (Witness complies.) Okay.
Q. Okay. This is a letter from Dr. Joseph Smith at Hamot Medical Center dated December 23rd, 1976, correct?
A. Correct.
Q. And in this letter Dr. Smith says in the middle of the second paragraph, "I would have to be very honest and say that I am somewhat biased against the program in Guadalajara, for I feel that their standards of acceptance and the quality of teaching that is provided is definitely inferior to any of the American schools." Have you ever seen this letter from Dr. Bambrick's file?
A. I have not.
Q. Do you agree or disagree with the sentiment that Dr. Smith expressed about the medical program in Guadalajara?
A. In 1976, I was an intern myself, and was aware that there was considerable bias by many Americans towards the Mexican schools. But during the course of my training,

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Q. If you look at 61 -- we're going to go back to 61.
MS. RICHARD: 61 what?
MR. SOREK: Well --
A. You know, I'll go on to say that Dr. Bambrick's performance here was more or less a complete failure and he didn't make it, so. For whatever reason, I think that people in North Dakota were right and he did need to quit. And all I did was give him another chance, but he didn't pass in Erie either.
Q. Let me ask you to take a look at 6344.
A. Okay.
Q. This looks like a report of a counseling session with Dr. Bambrick dated July 31st, 1982. And it purports to describe a reprimand that Dr. Bambrick got for leaving the hospital to participate in a softball game; is that correct?
A. Yes.
Q. And in the middle of the paragraph it says, "There was a patient in the emergency room who developed a problem as a result of a fracture that was not cared for." Do you see that?
A. Yes.
Q. And then Dr. Bambrick -- at the end, Dr. Bambrick was told, "He is no longer to leave the hospital for any reason, especially to perform in a softball game." Correct?
A. Correct.

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Q. Were you aware of this when you were assisting Dr. Bambrick in -- a few years ago, in 2002, 2003?
A. This particular episode, I was not.
Q. Okay. Did you look at his Hamot records when you were agreeing to assist Dr. Bambrick?
A. No, I believe I asked Dr. Rogers and Dr. Frankovitch whether they thought it would be worth providing him with a tutorial session, if you will.
Q. All right. Take a look at the next page. And this is --
A. 06345, is that what you're asking me about?
Q. Correct.
A. Okay.
Q. This purports to be a letter of reprimand to Dr. Bambrick about an incident during the week of July 11th, 1982, or about three weeks before the counseling session we just looked at. And the last two sentences say, "Dr. Bambrick was reprimanded for this situation and his distain for authority displayed by this course of action. He was also told that this type of action will not be tolerated in the future." And it appears to describe Dr. Bambrick's decision not to place a spreader bar on the cast. Is that an accurate characterization?
A. Right.
Q. Did you see this document before you assisted

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Dr. Bambrick?
A. I didn't review any of his Hamot records.
Q. Take a look at 6346.
A. (Witness complies.) This describes a situation where Dr. Bambrick is put on probation.
Q. All right. And the first sentence of the last paragraph says, "Dr. Bambrick was not supposed to be placed on probation and knows that he has been in trouble repeatedly throughout his residency." Do you see that?
A. I'll say that when I asked Dr. Rogers and Frankovitch about whether or not I ought to help him, they had both said that he had some problems as a resident. But both concurred with me that now having practiced Board certified, done what we felt was a good job for 10 or 15 years, we felt he was worth at least given another look. And we gave him another look, and he didn't make it.
Q. Take a look at the next page, 6475. And I'll really just ask you to look at the comments at the bottom.
A. "Bill will always" -- I don't know -- "problem, marginal work. I think he is aware of his ability and will" -- looks like "work to handle the problems. Dr. Frankovitch."
Q. So that's Dr. Frankovitch. But the first clause in that comment is, "Bill will always" -- and your interpretation controls, but I would suggest the next word

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is produce. "Bill will always produce marginal work."
MS. RICHARD: I'm going to object, only because this is somebody else's handwriting, and he's had already told you what he thinks it means. You're now saying what you think it means, and I think we can move from there because it's not a question.
MR. SOREK: Well, it is a question.
Q. Could that word be produce?
MS. RICHARD: If you --
A. I don't think so. I think Dr. Bambrick has always been marginal. And if that's what the essence of the evaluation is, marginal. And I have no fundamental disagreement with that. I think when he was a resident, he was marginal. And when I gave him a chance to come back here, he was worse than marginal. He didn't pass. And he's gone. And he won't come back.
Q. Reading any of these documents that you didn't look at, at the time, would that change your -- sitting here today, would it change your decision about whether to help him in 2002, 2003?
A. No.
Q. So getting back to 6136.
MS. RICHARD: Go back, like 400 pages back.
MR. SOREK: Actually --
MS. RICHARD: I guess because there's some missing

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A. He couldn't afford a license for -- to function as a resident. Couldn't afford the training license.
Q. Do you know how much the license cost?
A. It was $30,000 a month, I think. It was really expensive.
Q. Who did that money go to?
A. The money never went to anybody. He never paid it.
Q. Who was asking to be paid that money? Is it the state or is it the insurance company?
A. Insurance company.
Q. Okay. So the state would issue the license, but the state would only issue the license conditional on getting insurance.
A. Yes.
Q. Do other doctors pay less in malpractice insurance premiums?
MS. RICHARD: Less than what?
Q. Less than 30,000 a month.
A. Yeah.
Q. Do their malpractice premiums, are they based, in part, on their performance as a physician?
A. Yes.
Q. So it's not really accurate to say his clinical privileges were limited in the operating room by the

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malpractice crisis in Pennsylvania, is it? Because it appears that we have before us the information to determine that Dr. Bambrick's own performance also limited his ability to get a license.
MS. RICHARD: I'm going to object. You're characterizing the document. If you want to ask him a question, you can ask him a question. But you're characterizing the document in that testimony.
A. I disagree with you.
Q. Okay.
A. I think the cost was prohibitive. Because we have a crisis in Pennsylvania, and we did back in '03, and I think it's still at a crisis level.
Q. And the crisis -- define the crisis.
A. The cost of malpractice. We couldn't have trained this guy because of the cost.
Q. Okay. But is it fair to say that his cost was at that level because of his prior history as a physician with drug and alcohol problems, malpractice suits, suspension of licenses, et cetera?
MS. RICHARD: I'm going to object. You're being argumentative with the witness. Please ask a calm question and we'll go on.
MR. SOREK: Well, I will disagree with your

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characterization, but I certainly --
A. Well, I think $30,000 a month was -- is extraordinary, even given his risk. He was going to be in a supervisory capacity, a training license, and there were people looking over his shoulder all the time. And I thought that was an exorbitant amount to pay.
Q. I'm not questioning that. What I'm questioning is or -- asking the question about is, determination of the risk came at least, in part, would you agree, from his previous performance as a physician and not exclusively matters outside of that?
A. I think it's the insurance company that makes the call.
Q. All right. You also wrote on Page 6201, bottom of the first paragraph, "His communication skills with patients, colleagues and other professionals are also above average." Do you see that?
A. Yes.
Q. On what do you base that determination?
A. In the operating room, I think he knew he was under the microscope. He did a good job. And --
Q. At what? I'm sorry.
A. Communicating with his -- with his peers; nurses, myself. When asked a question, he knew the answer and was appropriate. He would read before he would come to the

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operating room. He recertified in his boards. So his knowledge base I didn't think was his problem.
Q. In the third paragraph you say, "As a Board examiner for American Board of Orthopaedic Surgery for the past ten years, I feel I have the experience and insight to judge whether an individual's character and clinical competence are within the norms of what should be permitted in clinical practice, period. I believe Dr. Bambrick meets this criteria." On what did you base that belief?
A. My interviews with Dr. Bambrick regarding his knowledge of various patients. We discuss a clinical situation, and he would respond to it. And as a Board examiner in orthopaedics, based on his knowledge at the time, I think he could have passed the exam.
Q. To what extent when you made that statement did you take into account his previous performances as a physician?
A. Which previous performance?
Q. His performance in Florida, his performance at Hamot as a resident, and his performance in North Dakota.
A. I think everybody deserves a second chance. And he passed his boards after Hamot. He overcame those weaknesses. And from what I can gather, he overcame his weaknesses in Florida at least for a number of years, and practiced at least at the level of maybe above the standard

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A. I don't remember.
Q. When was Dr. Bambrick last authorized to participate in the Orthopaedic Residency Program in whatever status you allowed him to have?
A. Well, what he did is something I would authorize a doctor from Meadville to do or anybody who wanted to come and watch. It's not a closed shop in that sense, but observerships are granted all the time. So when it was clear that he wasn't ever going to get his license, ever become an orthopedist again, then he went away.
Q. How long was he an observer in the program?
A. Again, I don't recall exactly.
Q. When was the last time you spoke to him?
A. I don't remember.
Q. What were the circumstances of him going away?
A. Well, I mean, he just doesn't come around anymore. There's no point in it. He came to try to learn and salvage his career. But once that became apparent, that he wasn't going to do that, he quit coming. And that was before that episode in the emergency room.
Q. Take a look at -- in the Volume 1, in the big binder, 2752.
A. (Witness complies.) Okay.
Q. All right. The document is a summary page for the computer application of a medical student for the residency;

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is that correct?
A. Yes.
Q. Are these applications -- these are reviewed in order to give interviews; is that correct?
A. Yes.
Q. And when the applications are being reviewed, the reviewers will write notes on the application; is that correct?
A. Yes.
Q. And who does the reviewing of the applications?
A. Depending on whatever year it is, it's been myself, it's been Dr. Delullo, Dr. Rogers, sometimes it's the chief resident, sometimes it's the resident who is assigned to the laboratory.
Q. Are there more than one reviewer or just one reviewer per application?
A. There's more than one reviewer per application.
Q. What's the practice at Hamot? Two, three?
A. There's usually about two.
Q. I'm sorry. Practice.
A. Two.
Q. Okay.
A. Average.
Q. And so there's a scoring system. What, the application gets a 1, 2 or a 3 or some variation of those

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numbers, correct?
A. Right.
Q. And then looks like there's -- the reviewer writes notes on the cover of the application, correct?
A. They can. They can just write interview, no interview. There's -- it's -- we usually get 200 applications for two spots, and we usually interview 30 people. Thereabouts. And so it's an interview -- it's a method to get from 200 to 30 or 35.
Q. Have you ever discussed with your reviewers what to look for --
A. Yes.
Q. -- when you're doing applications?
A. Yes.
Q. 2752 seems to show a note that says, "Married. Wife attorney." Do you see that?
A. Yes.
Q. Is that something that reviewers are supposed to look for, marital status?
A. Not necessarily, but that's what this person wrote down.
Q. Okay. Do you know why?
A. No idea why this person did that.
Q. Is that Dr. Cermak's handwriting?
A. I don't think she's ever done that. So, no, I

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don't think that is. I don't know whose writing that is. I see her writing a lot. Do you know what year it was?
Q. Let's see. Graduation date June 2002.
A. I don't know who that would have been.
Q. Does the marital status of a resident have anything to do with their -- with their selection by Hamot?
A. Well, the two ways it can have something to do, is if they are married, they have to want to come to Erie. So if their spouse can get a job here, that's often an issue. And then there's a so-called -- I think it's called a married match, where you can match -- it's called a couples match, and you can match a couple. And the spouse -- both spouses put down their preferences. And I think if they both list the same city, then the computer somehow gives them an edge.
Q. Take a look at 2799.
A. (Witness complies.) Okay.
Q. This looks like an application in which the reviewer has noted on the last note -- it looks like it says ice hockey at Harvard. Do you see that?
A. It looks like it.
Q. What would that have to do as part of the selection process?
A. Point of interest. Point of discussion.
Q. What would you find worth discussing about whether

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT I

April 8, 2003

My response to a memo written by Dr. Patrick Williams dated (3/(36)/03):
I am requesting this response to be included in my permanent record.

The first time I became aware of concerns Dr. Williams had about my performance on my three month hand rotation was two days before I was to leave that rotation. I phoned Dr. Williams after Dr. Lubahn made me aware of Dr. Williams telling him that he wanted to discuss a patient with me who had previously been discharged. Dr. Williams told me I did not round on that particular patient nine days prior to that conversation. I explained to him that I did round on that patient that Tuesday morning after conference at Shriners' Hospital but noticed he had written a note earlier that morning and did not repeat the exact same information I had ascertained while rounding on that patient. He insisted that I never saw the patient that day. He then added something to the effect that I probably did see the patient but it was at 6:00 PM. I again assured Dr. Williams I did see the patient after Shriners' and prior to going to St. Vincents. I explained to Dr. Williams that I was not being neglectful, but instead did not want to be disrespectful by "agreeing with above." We discussed the situation and I apologized for the misunderstanding, assuring Dr. Williams that I would not omit writing a note in the future - regardless if that patient had already been seen by him or any other attending. Dr. Williams then stated in his memo that I am "untruthful" and neglect patient care. These accusations are unfounded. This concerns me as well as why it took Dr. Williams nine days to discuss a problem with me.

This raises other issues in that memo. Dr. Williams refers to my performance that is not at the level of a PGY-2. Again, I am concerned with the lack of swift and frequent evaluations during my three month hand rotation, especially if he felt I was incompentent. At least three times during that rotation I expressed to Dr. Williams the need for direction with reading materials. More than once Dr. Williams told me he was devising a reading list. I expressed how anxious I was to get that list. I never did get that list or any direction for reading material to increase my hand knowledge base. Additionally, I never receive any feedback from Dr. Williams; positive or negative. He was to be my preceptor for the three hand talks that month. Far enough in advance prior to each talk, I asked Dr. Williams for direction, input, etc. for each talk. Again no direction was given, nor was there any interest in helping. It is my understanding that the role of a resident is to learn and the role of an attending is to teach. Just as attendings need help with their work, there are times residents also need help. In a situation like this, even one mid-rotation evaluation with constructive comments and support might have helped.

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Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT J

April 8, 2003

John D. Lubahn, MD
Hamot Medical Center
201 State Street
Erie, PA., 16550

Dear Dr. Lubahn,

This letter is a follow up of the conversations we had April 7, 2003 and April 8, 2003. After receiving your letter dated April 4, 2003 outlining a discussion regarding my academic and clinical standing in Hamot's Orthopaedic program, we addressed certain issues outlined in that letter. I was disappointed that you formulated a plan without my initial input and without completely understanding where and why there are deficiencies in my core knowledge. I had hoped we would have come up with a plan together based on my needs as well as your experience. It was my understanding, based on our April 2, 2003 meeting, that one of the goals was to find some additional time for reading and self-study. However, in your letter to me you outlined a new schedule which not only did not allow for additional time, but included more scheduled OR time and additional assignments. Let me once again express that I feel this is setting me up for failure. You did allow me to rearrange the schedule somewhat, and I followed up with Dr Babins and with you regarding that schedule change. I will put my schedule in writing for my current attendings to have for their records.

In the April 7, 2003 conversation I also asked what exactly "academic probation" means as a resident in this program. You answered with the desire to "help me." I also addressed the fact that during my three month hand rotation I had not had frequent, or even a mid-rotation evaluation by the other three hand attendings. In fact, the mid-year evaluation I had with you addressed mainly that, my performance for the first half of my second year. It concerns me that I am being evaluated 1 1/2 weeks after a rotation, particularly if certain attendings felt I was not performing adequately. After asking this question of you more than once during the April 7, 2003 conversation, you expressed to me that Dr. Cermak and Dr. Hood did not have any issues with me, and that I should address them directly with any questions. Dr. Williams' untimely evaluation, or lack of mid-rotation evaluation was never addressed.

Attached to this letter is a copy of my response to concerns and accusations from Dr. Patrick Williams which were presented to me as a "memo" to be put in my permanent record. I am requesting this response to be kept in my permanent record.

Sincerely,

Lisa A. Brown, MD
PGY-2, Orthopaedic Resident

Cc: my permanent file

APR 8 2003

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
Civil Action No. 05-32E

Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment

EXHIBIT K

Current list of residents by gender:

PGY-1	Kevin Kuzma, MD Joseph Fazalare, MD
PGY-2	Aaron Wallace, MD Ryan Will, MD
PGY-3	Jason Evans, MD Vivek Sharma, MD
PGY-4	Brad Poole, MD
PGY-5	Craig Lippe, MD Mark Pollard, MD

Resident Graduates (All successfully completed program):

2004
Jeff Nechleba, MD
Jim Seeds, MD

2003
James DeLullo, MD
Carl Seon, MD

2002
Dave Ivance, MD
Nick Kubik, MD

2001
Stephanie Galey, MD
Brian Dickson, MD

2000
Ted Green, MD
Steve Hribar, MD
Jeff Keverline, MD

1999
Christopher Arnold, MD

In the past 10 years everyone has completed the orthopaedic program with the exception of Lisa Brown, MD

LISA BROWN, M.D., v. HAMOT MEDICAL CENTER
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EXHIBIT L